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# KECK, MAHIN & CATE

FILE NUMBER 45737-006

DIRECT DIAL (202) 789-3447

February 8, 1995

William F. Caton, Acting Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

RECEIVED  
FEB 8 1995  
DOCKET FILE COPY ORIGINAL

Re: Request for Confidential Information,  
Petition of the State of California, PR Docket No. 94-105

Dear Mr. Caton:

Enclosed please find an original and one copy of a protective order to authorize access to Confidential Information being made available with respect to the State of California's petition in the above-referenced matter. In addition to the Parties identified below, the Confidential Information will be made available to Charles L. King, the Parties' economic expert, Peter A. Casciato, co-counsel, and myself. Declarations for the three named individuals are attached to the enclosed protective order.

If the staff has any questions concerning the protective order or the declarations, I can be contacted at the above telephone number.

Please note that the signature for Mr. Casciato is a fax copy; the original will be filed as soon as I receive it.

Sincerely,

KECK, MAHIN & CATE

Attorneys for Cellular  
Resellers Association, Inc.,  
Cellular Service, Inc., and  
ComTech Mobile Telephone  
Company, Inc.

By:   
Lewis J. Baper

Enclosures

cc: Attached service list

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A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CHICAGO, ILLINOIS HOUSTON, TEXAS LOS ANGELES, CALIFORNIA SAN FRANCISCO, CALIFORNIA  
PEORIA, ILLINOIS OAKBROOK TERRACE, ILLINOIS SCHAUMBURG, ILLINOIS  
KECK, MAHIN, CATE & KOETHER NEW YORK, NEW YORK FAR HILLS, NEW JERSEY

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1. For purposes of PR Docket No. 94-105 and this Order, "Confidential Information" shall mean and include trade secrets and commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), as well as the following:

a. Market share data as contained in pages 29 to 34 of the unredacted Petition of the People of the State of California and the Public Utilities Commission of the State of California To Retain State Regulatory Authority Over Intrastate Cellular Service Rates ("Petition") and Appendix E thereto. The data on page 29 is disaggregated by carrier, and on pages 30-34, aggregated by market. Some data on page 30 is further aggregated by combining data in two markets. The data in Appendix E is aggregated as to resellers by market and disaggregated for cellular carriers.

b. Capacity utilization figures as contained in pages 50-53 of the unredacted Petition and in Appendix M. This data is aggregated for the Los Angeles market on page 51 and Appendix M-1, and disaggregated as to specific carriers on pages 52-53 of the Petition and Pages M-1 to M-3 of Appendix M.

c. Disaggregated, carrier-specific data regarding the number of customers per year, per rate plan, both wholesale and retail, as contained in Appendix J to the Petition, with the exception of the numbers of customers on each carrier's specific discount plans, which shall not be disclosed.

d. Only for carriers other than those referred to as the six acceding carriers, annualized per-subscriber financial data, including revenues, operating expenses, expenditures for plant, operating income, and subscriber growth percentages for 1989-93. found in Appendix H to the Petition.

2. Confidential Information submitted herein by the State of California and the Public Utilities Commission of the State of California ("California") shall be segregated from all material filed and deemed non-confidential as generally set forth in the pleadings filed publicly by California on August 8, 1994, and subsequent revisions filed on February 2, 1995, in PR Docket No. 94-105 ("Proceeding"). Confidential Information thus segregated shall consist of materials specified by the Commission in its Order, DA 94-111 (Jan. 25, 1995) or any subsequent actions in these proceedings.

3. Confidential Information may be disclosed, directly or indirectly, only to:

a. Counsel for the Parties to this Proceeding (Parties) and their associated attorneys, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding, provided that such persons are not representing or advising or otherwise assisting providers of California commercial mobile radio services in devising marketing plans to compete against California carriers that are Parties to this Proceeding;

b. Specified persons, including employees of the Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in connection with PR Docket No. 94-105, excluding those persons who are directly or indirectly involved in or have direct or indirect supervisory responsibilities over the development of marketing plans for California commercial mobile radio services providers to compete against California cellular carriers that are parties to this Proceeding; or

c. Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

4. Counsel may request that the Commission provide one copy of Confidential Information (for which counsel must, as a prerequisite, acknowledge receipt pursuant to this Order), and counsel may thereafter make no more than two additional copies but only to the extent required and solely for the preparation and use in this proceeding, and provided further, that all copies of the Confidential Information shall remain in the care and control of counsel at all times and shall not pass to any other persons. Following the filing of Further Comments, counsel shall retain custody of the Confidential Information until such time as it is necessary to prepare additional filings in connection with PR Docket No. 94-105 in the discretion of counsel. If such additional filings are necessary, counsel shall retain custody of the Confidential Information following submission of such additional filings. Counsel shall return to the Commission within forty-eight hours after the final resolution of PR Docket No. 94-105 all Confidential Information originally provided by the Commission as well as all copies made, and shall certify that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel may retain copies of pleadings submitted on behalf of clients.

5. Confidential Information shall not be used by any person granted access under the Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review), and shall not be used for competitive business

purposes or otherwise disclosed by such persons to any other person except in accordance with this Order. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

6. a. Before obtaining access to Confidential Information, counsel must apply for access to such materials by executing the attached Declaration.

- b. Counsel may disclose Confidential Information to persons to whom disclosure is permitted under the terms of paragraph 3 of this Order only after advising such persons of the terms and obligations of this Order and obtaining such person's written consent to be bound by its terms, except that written consent need not be obtained from paralegals and clerical staff.

- c. Counsel shall provide to the FCC and, in the absence of a need for confidentiality, to California and/or the other Parties, the name and affiliation of each person other than counsel to whom disclosure is made or to whom actual physical control over the documents is provided, by the deadline prescribed by the Commission for filing comments on the Confidential Information, or within three (3) business days after the disclosure if such disclosure occurs after the deadline for filing such comments. To the extent that any name is not disclosed to California, that fact shall be disclosed to the FCC and California.

7. Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

- a. any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;

- b. the portions containing or disclosing confidential Information must be covered by a separate letter referencing this Protective Order; and

- c. each page of any Party's filing that contains or discloses Confidential Information subject to the Order must be clearly marked: "Confidential information included pursuant to Protective Order, PR Docket No., 94-105."

- d. the confidential portion(s) of the pleading shall be served upon the Secretary of the Commission and

California, and one and only one copy shall be served upon those individuals who have signed the attached Declaration, and such confidential portions shall be served under seal, and shall not be placed in the Commission Public File, unless the Commission directs otherwise (with notice to the Party that filed the pleading and an opportunity to comment on such proposed disclosure). The Parties shall provide courtesy copies to the Lead Advisor to the Wireless Telecommunications Bureau Chief and to the Chief, Policy Division, Wireless Telecommunications Bureau, who will ensure that copies are distributed to the appropriate Commission personnel.

8. Disclosure of materials described herein shall not be deemed a waiver by California or any other Party in any other proceeding, judicial or otherwise, of any privilege or entitlement to confidential treatment of such Confidential Information. Inspecting parties, by viewing said documents: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceedings; and (c) agree that accidental disclosure or privileged information shall be not deemed a waiver of the privilege.

9. The entry of this Order is without prejudice to the rights of California to apply for additional or different protection where it is deemed necessary or to the rights of the Parties to request further or renewed disclosure of Confidential Information. Moreover, it in no way precludes the Commission from disclosing any information where the public interest so requires.

**DECLARATION**

PR DOCKET 94-105

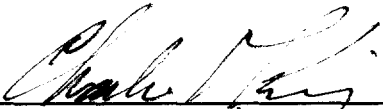
I, Lewis J. Paper, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Wireless Telecommunications Bureau in Federal Communications Commission proceeding PR Docket No. 94-105, that I agree that I will be bound by its terms pertaining to the confidentiality of Confidential Information and that I am not involved in devising marketing plans for any of the Parties.

  
\_\_\_\_\_  
Lewis J. Paper

**DECLARATION**

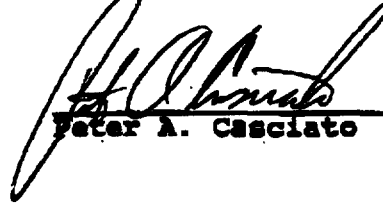
PR DOCKET 94-105

I, Charles W. King, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Wireless Telecommunications Bureau in Federal Communications Commission proceeding PR Docket No. 94-105, that I agree that I will be bound by its terms pertaining to the confidentiality of Confidential Information and that I am not involved in devising marketing plans for any of the parties.

  
\_\_\_\_\_  
Charles W. King

**DECLARATION****PR DOCKET 94-105**

I, Peter A. Casciato, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Wireless Telecommunications Bureau in Federal Communications Commission proceeding PR Docket No. 94-105, that I agree that I will be bound by its terms pertaining to the confidentiality of Confidential Information and that I am not involved in devising marketing plans for any of the Parties.

  
Peter A. Casciato



CERTIFICATE OF SERVICE

I, Merri Jo Outland, do hereby certify that copies of the foregoing were sent this 8<sup>th</sup> day of February, 1995, by first-class United States mail, postage prepaid, to the following:

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